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# IN THE
# COURT OF APPEALS OF INDIANA

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|---|---|---|
| FRANCISCO EGUIA, | ) | |
| | ) | |
| Appellant-Defendant, | ) | |
| | ) | |
| vs. | ) | No. 01A02-0610-CR-845 |
| | ) | |
| STATE OF INDIANA, | ) | |
| | ) | |
| Appellee-Plaintiff. | ) | |

APPEAL FROM THE ALLEN SUPERIOR COURT
The Honorable James Heimann, Judge
Cause No. 01D01-0501-FD-12

**June 5, 2007**

**MEMORANDUM DECISION – NOT FOR PUBLICATION**

**RILEY, Judge**

## STATEMENT OF THE CASE

Appellant-Defendant, Francisco Eguia (Eguia), appeals his conviction for Count I, operating a vehicle while intoxicated, a Class D felony, Ind. Code §§ 9-30-5-2(a); 9-30-5-3 and Count II, resisting law enforcement by fleeing in his vehicle, a Class A misdemeanor, I. C. § 35-44-3-3.

We affirm.

## ISSUES

Eguia raises two issues on appeal, which we restate as follows:

(1) Whether the evidence was sufficient to sustain Eguia's conviction for operating a vehicle while intoxicated; and

(2) Whether the evidence was sufficient to sustain Eguia's conviction for resisting law enforcement by fleeing in his vehicle.

## FACTS AND PROCEDURAL HISTORY

On February 16, 2005, at approximately 1:20 p.m., Officer James Franze (Officer Franze) of the Decatur Police Department initiated a traffic stop on a Jeep that Eguia was driving. Officer Franze had previously recognized the driver as Eguia and had confirmed that he was driving with a suspended license. When Eguia pulled out of the Bank of Berne parking lot and onto U.S. Highway 27, Officer Franze activated his emergency lights. Eguia failed to stop, so Officer Franze activated his siren. After Eguia continued on, Officer Franze activated his outside speaker asking Eguia to pull over. Eguia continued for three quarters of a mile, through six to eight city blocks and several turns before finally coming to a stop.

Once Officer Franze began questioning Eguia, he noticed an odor of alcohol on Eguia's breath. Officer Franze also noted that Eguia had "watery eyes, the squinty eyes, the thick tongue, [and] slurred speech." (Transcript p. 266). When Officer Franze asked him if he had been drinking, Eguia responded he had consumed a beer earlier that morning. Eguia performed 3 different sobriety tests—the finger to the nose, the walk and turn, and the horizontal gaze and nystagmus tests—which he failed. Eguia refused to take a chemical test on the scene. At that time, Officer Franze placed Eguia under arrest for driving while intoxicated and transported him to the Adams County Law Enforcement Center where Eguia again refused the chemical test.

On February 18, 2005, the State filed an Information charging Eguia with Count I, operating a vehicle while intoxicated, a class A misdemeanor, I.C. § 9-30-5-2(a) and Count II, resisting law enforcement by fleeing in his vehicle, a Class D felony, I.C. § 35-44-3-3(a)(3). That same day, the State filed a notice of intent to seek an enhanced penalty based on a prior conviction for operating a vehicle while intoxicated. After three subsequent amendments to the charging information, Count I, initially a Class A misdemeanor, was amended to a Class C misdemeanor.

On July 17, 2006, after a jury trial, the jury found Eguia guilty as charged. Thereafter, Eguia pled guilty to the Class D felony enhancement of Count I, operating a vehicle while intoxicated. On September 19, 2006, a sentencing hearing was held. Eguia was sentenced to one and one-half years on count I, with 120 days to be served as an executed sentence and the remainder of the sentence suspended. On Count II, the trial court reduced his conviction from a Class D Felony to a Class A misdemeanor for

sentencing purposes and sentenced him to 60 days incarceration to be served concurrently with count I.

Eguia now appeals. Additional facts will be provided as necessary.

DISCUSSION AND DECISION

Sufficiency of the evidence has a well-settled standard of review. In reviewing sufficiency of the evidence claims, we will not reweigh the evidence or assess the credibility of the witnesses. *White v. State*, 846 N.E.2d 1026, 1030 (Ind. Ct. App. 2006), *trans. denied.* Instead, we will consider only the evidence which supports the conviction, together with all reasonable and logical inferences to be drawn therefrom. *Id*. We will affirm the conviction if there is substantial evidence of probative value to support the conviction of the trier of fact. *Id*. When a judgment is based on circumstantial evidence, it will be sustained if the circumstantial evidence alone supports a reasonable inference of guilt. *Id*.

I. *Operating a Vehicle While Intoxicated*

I.C. § 9-30-5-2(a) requires the State to prove beyond a reasonable doubt that the accused operated a vehicle while intoxicated. Intoxication is defined as being

> under the influence of:
> (1) alcohol;
> (2) a controlled substance (as defined in IC 35-48-1);
> (3) a drug other than alcohol or a controlled substance;
> (4) a substance described in IC 35-46-6-2 or IC 35-46-6-3; or
> (5) a combination of substances described in subdivisions (1) through (4);
> so that there is an impaired condition of thought and action and the loss of normal control of a person's faculties.

I.C. § 9-13-2-86.

In *Beasey v. State*, the officer "smelled a strong odor of alcohol on Beasey's breath, observed that Beasey's eyes were glassy, semi-hooded, and red, and that Beasey was slurring his words." *Beasey v. State*, 823 N.E.2d 759, 762 (Ind. Ct. App. 2005). We held that this evidence was sufficient to establish the defendant's intoxication. *See id*. at 763. Likewise, in the present case, the evidence is sufficient to support Eguia's conviction. Officer Franze testified that after pulling Eguia over, he smelled an alcoholic odor on his breath. Officer Franze also noticed that Eguia had "watery eyes, the squinty eyes, the thick tongue, [and] slurred speech." (Tr. p. 266). Furthermore, the record discloses that Eguia also failed the three field sobriety tests conducted by Officer Franze. Accordingly, we find the evidence presented is sufficient to sustain his conviction for operating a vehicle while intoxicated.

## II. *Resisting Law Enforcement*

I.C. § 35-44-3-3(a)(3) provides that a person is guilty of resisting law enforcement when

> a person who knowingly or intentionally: . . . (3) flees from a law enforcement officer after the officer has, by visible or audible means, including operation of the law enforcement's siren or emergency lights, identified himself or herself and ordered the person to stop.

This offense is considered a class A misdemeanor unless "the person uses a vehicle to commit the offense" in which case it is then considered a class D felony. I.C. § 35-44-3-3(3)(b)(1)(A).

In the instant case, the evidence is sufficient to support his conviction. The record reflects that Eguia continued driving his vehicle even after Officer Franze had activated

his emergency lights, his siren, and even his outside speaker asking Eguia to pull over. The total distance traveled from the time Officer Franze activated his lights until Eguia pulled over was approximately three-quarters of a mile or six to eight blocks.

Eguia now claims that he did not resist because he never exceeded the speed limit, committed no other moving violation, and did not flee on foot after he finally stopped. We find Eguia's contention to be without merit. The plain wording of the statute clearly does not provide for a high speed or long distance race, but rather merely requires that the defendant fails to stop after an officer orders him to do so. Thus, we conclude that there is substantial evidence to support this conviction.

## CONCLUSION

Based on the foregoing, we find that there is substantial evidence of probative value to support Eguia's conviction on Count I, operating a vehicle while intoxicated and Count II, resisting law enforcement by fleeing in his vehicle.

Affirmed.

NAJAM, J., and BARNES, J., concur.